IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8447 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH KANTILAL POPAT ALIAS RAJU RUPAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8447 of 2002

MR SHAKEEL A QURESHI for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 13.7.2002. By the

impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of three criminal cases, which are filed against the petitioner. It is alleged against the petitioner that, he is a headstrong person and he is beating innocent persons. There is also a reference of statements of two witnesses in the detention order.

#. At the time of hearing of this petition, it is submitted by the learned advocate for the petitioner that the petitioner has already pointed out by way of the representation as stated in para 6 that so far as the offence registered with Malavianagar Police Station, being CR No.591 of 2000 is concerned, the authority has specifically relied upon the said offence at the time of passing the detention order. It is stated that, only few statements in connection with the said case are given to the petitioner and the statement recorded under Section 161 of the Criminal Procedure Code as well as other statements of the witnesses of the said CR have not been supplied to the petitioner. The said aspect is highlighted by the petitioner in his representation, which is made through the advocate on 16.8.2002 and in para 6 of the said representation, he demanded the statements of the witnesses recorded under Section 161 of the Criminal Procedure Code.

#. The learned AGP, however, argued that, it is not necessary to supply the statements recorded by the authority under Section 161 of the Criminal Procedure Code, and, therefore, the same were not given to the petitioner. It is submitted that the relevant documents upon which the authority has relied upon, were given to the petitioner. Learned advocate for the petitioner, however, relied upon the decision of this Court reported in 2001(3) GLR 1957 wherein this Court in para 12 has observed as under.:

"Now, here, I may consider ancillary point which arises for consideration. In the cases where

charge-sheet have been submitted against the detenu in criminal Court, it is true that the copies of the statements of witnesses recorded under Sec.161 of Cr.P.C. would have been furnished to him, but only on this ground, this right of the petitioner to claim copies of these documents from the detaining authority cannot be denied. If such a course is adopted, there may be manifold difficulties in the way of the detenu to collect all these documents because in our system, those papers would have been with the Advocate engaged by the detenu and to take those documents from the Advocate would have been a time consuming factor. There is yet another patent difficulty with the detenu if this course is made applicable in his case. Firstly, he is in jail and it is difficult for him to collect this material from his Advocate. Secondly, when he approaches the Advocate, he may have pretext here and there not to give those documents so that the detenu has come to the compromise and engage him for filing representation in detention matter. I have seen cases after cases wherein the detenus have filed their representations against the detention order through the Advocates. To make representation against detention order, the detenu may not need the assistance of an Advocate. However, in substantial number of cases, I have seen that representations against detention are being made either by the detenu himself of through his relations. The detention order results in deprival of, may be temporarily, liberty to the detenu, where the authority decides to detain him for his activities, certainly he can legitimately make demand for supplying him copies of all vital and the relevant documents. The detaining authority is under a legal obligation to supply the copies of all those documents which are vital and relevant to make an effective representation against the detention by the detenu. Relevance and vitality of a document to certain extent has to be decided by the detenu and not by the detaining authority. However, where documents demanded are wholly irrelevant or unconcerned to the matter, then in that case, the detaining authority may be justified to decline this request of the detenu. In such case, where the request is made for supply of copies of the documents by the detenu and the detaining authority considers that copies of those

> documents cannot be given to him, a reasoned order is expected from it, that is to say, to give reasons in support of that order. This reasoned order will serve twofold purposes. If the detenu is satisfied with the reasons given, he may not pursue the matter further, and as a result of which, it will save him from expenses of litigation as well as the State Government. Secondly, where the matter is taken up before this Court, the Court will be in a better position to appreciate the matter and in many cases may not call the respondent with the record or reply. To sum up, it is made clear that the detenu is entitled for copies of the statements of witnesses recorded under Sec.161 of Cr.P.C. in criminal cases which are taken into consideration by the detaining authority to detain him under the Act, irrespective of the fact, whether those statements are part of the material which has been placed before the authority for consideration and passing of the order of his detention. Secondly, copies of the statements recorded under Sec.161 of Cr.P.C. in criminal cases which are made use of for detention of the detenu under the Act even if in those cases, charge-sheet is submitted in the Court, the detenu has all the right to claim copies thereof from the detaining authority. Thirdly, where the detaining authority is not inclined to give copies of those documents (statements recorded under Sec.161 of Cr.P.C.) it has to record reasons in support of its decision."

#. Since the petitioner has already made a demand for giving the copies of the aforesaid statements recorded by the authority under Section 161 of the Criminal Procedure Code, especially, when the authority has considered the said fact into account while passing the aforesaid order, all necessary documents were required to be supplied to the petitioner and the sponsoring authority was required to supply all these documents to the detaining authority. In that view of the matter and in view of the aforestated judgment of this Court, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 13.7.2002 is quashed and set aside. The detenu Rajesh Kantilal Popat Alias Raju Rupam is ordered to be set at liberty forthwith if he is not required in connection with any

other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)